



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 23 2010

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Section 106 Allocation for FY 2010

FROM: James A. Hanlon, Director
Office of Wastewater Management

TO: Regional Water Division Directors

Purpose:

This memorandum provides guidance for the implementation of the supplemental Section 106 funding provided by the FY 2010 appropriation. Attached is the Final Section 106 FY 2010 Funding Targets for States, Territories, Interstate Compact Commissions (ICC's) and Regional allocations for Tribes. The third column contains the increase in Section 106 funding for FY 2010.

Background:

The FY 2010 appropriation bill includes an increase of \$10,769,000 for the Section 106 Program. The conference report language for the FY 2010 appropriations bill includes the following:

"The Agency is directed to ensure that the increased funds are used to strengthen State permitting and enforcement efforts and to ensure that these funds supplement and expand, not supplant, base State enforcement program resources."

Approach:

The Agency has determined, based on the direction in the above report language, that the additional funds will be targeted to activities that support National Pollutant Discharge Elimination System (NPDES) permitting and enforcement in all water pollution control programs.

The Agency has begun working with States to implement the Clean Water Act Action Plan (Action Plan) (<http://www.epa.gov/oecaerth/civil/cwa/cwaenfplan.html>). States should consider the Action Plan in their plans to use these additional FY 2010 funds.

As the Regions negotiate new or amend existing State, Territory, ICC and Tribal work plans, the Region should ensure the following:

States (including the Virgin Islands) with NPDES authority – the increase in Section 106 funding should be used for NPDES permitting and enforcement activities directly. Enforcement activities include compliance monitoring (inspections). States should consider those activities found in the Action Plan.

States, Territories and ICC's without NPDES authority – the increase in Section 106 funding should be used for activities that support permitting and enforcement, such as developing total maximum daily loads, water quality standards, or conducting monitoring in support of EPA permitting and enforcement actions.

Tribes – any increase in Section 106 funding should be used for activities that support permitting and enforcement. Funds should be targeted for Tribes that are initiating or expanding their authorities in a manner that supports permitting and enforcement such as Tribal development and implementation of water quality standards (including developing “treatment in a manner similar to a state” documents), or monitoring in support of EPA NPDES permitting and enforcement actions

Additional Requirements for the FY 2010 Section 106 Grants

The following requirements apply to the \$10,769,000 increase in Section 106 funding for FY 2010 and are necessary to ensure that the additional funding is used as Congress directed.

1. Separate identifiable task(s) in work plan and budget for this funding - the activities in the work plan that support NPDES permitting and enforcement must be separate tasks and a separate line item in the budget. There is no requirement to track these additional funds once the work plan has been approved. Regions are expected to ensure the level of effort proposed in the work plan is appropriate for the tasks proposed.
2. Establish identifiable outputs and outcomes – the permitting and enforcement activities identified in the work plan for these funds must have distinct, identifiable outputs and/or outcomes.
3. Completion report – Grantees must report on the permitting and enforcement activities (outputs and/or outcomes) separately in their annual reports.
4. Supplement and expand, not supplant – Congress explicitly directed EPA “to ensure that these funds supplement and expand, not supplant, base State

enforcement program resources.” Applications for the supplemental Section 106 funding must include the following statement:

“By submitting this application, the (Name of State, Territory, ICC or Tribe) certifies that the [\$X] increased funds will be used to strengthen permitting and enforcement efforts and to ensure that these funds supplement and expand, not supplant, base permitting and enforcement program resources.

With the application, States, and ICC’s are required to identify their Maintenance of Effort (MOE) level. The MOE is the amount the State/ICC has expended from all State/ICC sources on water pollution control programs during the most recent twelve month accounting period. A state-wide or department-wide general reduction is not considered supplanting or reducing State/ICC funding for the purpose of this requirement. Tribes do not have an MOE level, instead they will include their required five percent match amount

The funds will be transferred to the Regions the week of March 22, 2010. Thank you for your assistance in this matter. If you have any questions, please contact me, or have your staff contact Robyn Delehanty at (202) 564-3880 or delehanty.robbyn@epa.gov.

cc: Lauren Willis, OGC
Section 106 Regional Coordinators
Section 106 Tribal Coordinators